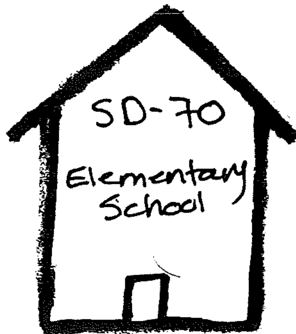
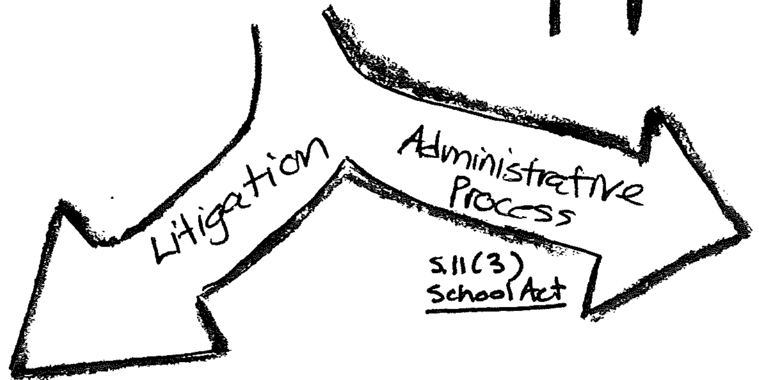
SERVATIUS v. ALBERNI SCHOOL DISTRICT NO 70.

2022 BCCA 421



Sept 2015 - smudging demonstration in classroom

Jan 2016 - Hoop Dance (and prayer) at assembly



PLEADINGS

- school is imposing prayer + religious rituals
- coerced to participate in cleansing ritual
- in facilitating religious activity, SD70 violated:
  1. s.2(a) Charter
  2. it duty of religious neutrality

RELIEF SOUGHT

1. Declaration that these actions violated her Freedom of Religion
2. Order prohibiting schools from allowing religious practices
3. Costs

FIVE DAY TRIAL (Nov 18-22, 2019)

- 16+ affadavits
- cross-examination
- facts and "social facts"

Servatius v. Alberni SD-70, 2020 BCSC 15

"Being taught about beliefs is not an infringement of religious freedom - even when this teaching is done by an Elder at close range + in a manner that engages a student's sense of smell as well as her senses of sight and sound, and even if this teaching results in some cognitive dissonance" [para 108, trial decision]

Given S's limited means, I will exercise discretion to order each side to bear its own costs

S has failed to show that the smudging or prayer by Hoop dancer interfered with her or her children's freedom of religion ∴ no need to consider justification under s.1 of the Charter

Trial judge was wrong on merits

Trial judge was wrong on costs

SD 70

[para 22-97] Legal Framework for consideration of Religious Freedom ... in general

S has not shown the judge made a palpable and overriding error, or that he misapprehended the evidence. "She simply wishes this court to re-weigh it. That is not this courts role." [240]

∴ No need for a proportionality analysis.

COSTS, IS ANOTHER STORY! S to pay costs in both actions

" in litigation purporting to advance public interest arguments, it is generally not appropriate for (ghost) parties to lurk in the background, providing extensive funding, evidence, advice or information." [para 274]

[249] … Ms. Servatius also made written submissions to the judge that her family was of "limited means" and would "suffer hardship" if costs were awarded against her, arguing that the School District had a "superior capacity" to pay costs. The judge appeared to accept these submissions.

[256] In her post-appeal written costs submission, Ms. Servatius disclosed, for the first time, that the JCCF was funding her fees and disbursements in the litigation, as well as agreeing to help her pay any award of costs by agreeing to fundraise for her if costs were awarded against her.

[257] I note that different counsel represented Ms. Servatius at trial than on appeal, although both were supported by the JCCF funding. It would have been preferable for Ms. Servatius to be transparent to the judge about the JCCF funding, as it is clearly relevant to the public interest analysis that a special interest group is funding the litigation, not the named petitioner. In my view, had the judge known this fact he would not have exercised his costs discretion in the way he did. He was clearly influenced by the misleading assertions about Ms. Servatius's capability of weathering the burden of paying a costs award.

[277] Ms. Servatius's petition sought not only a declaration that her religious freedom was violated, but she also sought an order prohibiting the school from "facilitating or allowing religious practices". Ms. Servatius advanced the position before the judge that, by hosting two rather innocuous Indigenous cultural events, the school was favouring Indigenous spirituality, and, as a consequence, no such Indigenous cultural events should ever be hosted in schools. This very broad and vague relief seeking to restrict unknown future actions of the School District from ever hosting Indigenous cultural events was not supported by any version of the facts or interpretation of the law and was untenable from the start. However, its broad implications had to be defended by the School District.

[280] In the circumstances, the JCCF's involvement in effect insulated Ms. Servatius from normal costs consequences and put the School District on an uneven playing field in having to defend the very broad relief advanced in this litigation.